

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 579 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHAIKH HAIDAR SHAIKH IMAMUDDIN

Versus

STATE OF GUJARAT

Appearance:

MR S K Patel for Petitioner

Mr M A Bukhari, APP for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 05/03/97

ORAL JUDGEMENT

Wife of the accused Shaikh Haidar Shaikh Imamuddin, Appellant in Criminal Appeal No.579/95 has moved this court with a prayer that her husband be either released on bail or the appeal be heard at an early date. Considering the fact that the appellant has undergone the major part of the sentence, I propose to set down the

appeal for hearing today itself. Since the accused appellant is non-represented, I have requested Mr S K Patel, learned Advocate to assist the Court.

2. The prosecution case is that on 20.5.1994, the accused was found carrying 12 Kgs. of Ganja at Railway station, Surat. A panchnama was prepared and after investigation, the accused was put to trial for offence under section 20(b) of the NDPS Act. The learned Sessions Judge, Surat convicted the appellant for the said offence and sentenced to 4 years Rigorous Imprisonment and fine of Rs.20,000/- and in default of payment to further undergo imprisonment of one year.

3. Mr Patel has contended that the learned Sessions Judge has failed to consider that the evidence with respect to the recovery is not satisfactory. On the other hand, Mr M A Bukhari, learned APP submits that it is a foolproof case in which the accused was caught red handed carrying 12 kg. of Ganja. He further submits that all the provisions of NDPS Act has been punctually complied with.

4. I have gone through the judgment and the evidence on record. In my view, the learned Judge has rightly arrived at the conclusion that 12 Kg. of Ganja was found in possession of the appellant. In view of this, conviction for offence under section 20(b) of the NDPS Act does not call for any interference and the same is accordingly confirmed.

5. It is next argued by Mr S K Patel that maximum sentence provided under section 20(b) is 5 years and the appellant has been awarded sentence of 4 years. The petitioner is in jail since 23.5.1994 and as such he has undergone 2 years and 9 months. He also submits that the appellant is a poor man so much so, that he has not been able to engage a Lawyer before this court. The prayer of Mr Patel is that a lenient view may be taken in the matter and the sentence awarded may be reduced to the period already undergone. Mr Bukhari, learned APP has opposed this prayer and he submits that the offence under NDPS Act are of serious nature, and therefore, it does not call for any lenient view. He also submits that in case the sentence is reduced, the fine may be enhanced.

5. Considering the rival contentions on the point of sentence, in my view, ends of justice would be met if the sentence awarded is reduced to the period already undergone. So far as the fine is concerned, I cannot agree with the contention raised by the learned APP.

Looking to the extreme poverty of the petitioner, in my view, instead of enhancement, it deserves to be reduced. Accordingly I reduce the fine to Rs.2,000/-.

6. In view of the aforesaid, this Criminal Appeal is partly allowed. Conviction of the appellant for offence under section 20(b) of the NDPS Act is confirmed. However, the sentence is reduced to the period already undergone and the fine is reduced from Rs.20,000/- to Rs.2,000/- in default of fine, the petitioner will further undergo rigorous imprisonment for a period of 2 months. The appellant is allowed one month's time to deposit the amount of Rs.2,000/-. Direct Service.

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